IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
WRIT PETITION NO.3732 OF 2006

Madhukar Shankar Parsekar,)
Age 65 years, Citizen of India,)
residing at Structure at Plot of)
land at Koldongri, Sahar Road,)
Andheri (E), Mumbai - 400 059.).. Petitioner

Vs.

1. The State of Maharashtra,)
Through the Administrator &)
Divisional Commissioner,)
Konkan Division, Mumbai.)

2. Chief Executive Officer,)
Slum Rehabilitation Authority,)
5th Floor, Griha Nirman Bhavan,)
Bandra (E), Mumbai-400 051.)

3. The Additional District)
Collector, (ENC) & C.A.)
Western Subrub Office,)
New Administrative Building,)
7th Floor, Bandra (E),)
Mumbai - 400 051.)

4. Deputy Collector (ENC))
Bandra office, MHADA Building,)
Ground Floor, Room No.68,)
Bandra (E), Mumbai 400 051.)

5. Global Buildcon Pvt.Ltd.,)
Ground Floor, Raheja Centre,)
214, Free Press Journal Marg,)
Nariman Point, Mumbai.)

6. Shri Tirupati Balaji)
SRA C.H.S.Ltd., Koldongri,)
Sahar Road, Mumbai 400 069.).. Respondents
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Shri Rajesh D.Bindra for the Petitioner.

Ms V.C.Mhaispurkar, AGP for the respondent Nos.1, 3 and.

Shri Utangale i/b M/s.Utangale & Co. for the respondent No.2.

Shri G.S.Godbole with V.V.Warerkar i/b M/s.Warerkar & Warerkar for the respondent Nos.5 and 6.

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CORAM : R.M.S.KHANDEPARKAR, J

DATED : 5TH OCTOBER, 2006

ORAL JUDGMENT :

1. Heard. Rule. By consent, the rule is made returnable forthwith. The petitioner challenges the order dated 24th May, 2006 passed by the Administrator & Divisional Commissioner, Konkan Division, Mumbai, whereby the petitioner is directed to vacate the premises and to hand over the possession of the land occupied by his structure as well as to shift to the alternative accommodation provided by the respondent No.5 herein.

2. The challenge to the impugned order is three-fold. Firstly that the lower appellate authority did not give sufficient opportunity to the petitioner of being heard in the matter in as much as that his request for adjournment of the hearing was rejected. Secondly that the order which was sought to

be challenged before the lower appellate authority was issued by an officer who was not authorised under the law to issue the said order and this fact was totally ignored by the lower appellate authority inspite of the specific objection being taken in that regard in the memo of appeal, and thirdly that inspite of the materials on record disclose that the structure of the petitioner occupies an area admeasuring 1460 sq.ft., in the alternative, he was sought to be allotted an area of 225 sq.ft.

3. The learned advocate appearing for the petitioner placing reliance in the unreported decision of the Division Bench in the matter of **Om Sai Darshan Cooperative Housing Society & Another v. The State of Maharashtra & Others,** in the Writ Petition No.910 of 2005 delivered on 26th April, 2006 submitted that the proper authority to issue an order in terms of the provisions of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971, hereinafter called as "the Slum Act", was the Chief Executive Officer, and therefore, neither the Deputy Collector nor any other officer could have issued the order which was sought to be challenged before the lower appellate authority. Attention was also drawn to the memo of appeal filed before the lower appellate

authority wherein a specific ground in that regard was raised by the petitioner. He further submitted that the ration card of the petitioner clearly discloses that the area occupied by the petitioner's structure was more than 1400 sq. ft., and therefore, there was no justification for the authority to provide alternative accommodation of an area of 225 sq. ft. He further submitted that when the matter came up before the lower appellate authority the advocate for the petitioner could not appear, and therefore, the petitioner sought adjournment in the matter but the lower appellate authority refused to grant adjournment and compelled the petitioner to argue the matter, as a result of which the petitioner could not place all the facts on record before the lower appellate authority, nor point out the provisions of law which had resulted into great prejudice to the petitioner.

4. On the other hand, the learned advocate for the respondents submitted that the scheme in question was in terms of the Regulation 33(10) of the Development Control Regulations for Greater Bombay, 1991, hereinafter called as the "D.C.Regulations", and therefore, to such scheme the provisions of Section 3D do not apply and hence no fault can be found with the order issued by the Deputy Collector and not by the

Chief Executive Officer. Specific attention was drawn to the paragraph 20 of the decision of the Division Bench of this Court which was sought to be relied upon by the learned advocate for the petitioner while contending that the same clearly supports the arguments advanced on behalf of the respondents. Further drawing attention to the clause (5) of the said D.C. Regulations, it was submitted that the premises of the petitioner are commercial premises, and therefore, in terms of the clause 5.3 of the D.C.Regulations the petitioner would be entitled for 225 sq. ft. carpet area irrespective of the area in occupation by the structure of the petitioner at present, and considering the same, no fault can be found with the impugned order whereby the petitioner was provided an alternative accommodation of 225 sq.ft. Considering the fact that the authorities have dealt with the real point in controversy which was required to be adjudicated upon, it is the contention on behalf of the respondents that no prejudice has been caused to the petitioner on account of refusal of the adjournment of the matter by the lower appellate authority.

5. As regards the contention about the absence of jurisdiction to the authority who had issued the order

which was sought to be challenged before the lower appellate authority as well as exercise of powers under Section 33 of the Slum Act, undisputedly, the scheme in question was sought to be executed in terms of the said D.C.Regulations and considering the decision of the Division Bench wherein it has been clearly held that "On plain reading of the Annexure to Regulation 33(10) it is obvious that for sanction of a scheme governed by the said Regulation in respect of a parcel of land, it is not necessary to have a declaration of the particular parcel of land as a slum rehabilitation area in exercise of power under section 3C(1) of the Slum Act. The Slum Rehabilitation Scheme can be sanctioned in respect of a slum as defined in clause II of Annexure to Regulation 33(10)", and taking into consideration the provisions of section 3D of the Slum Act which speaks of applicability of the amended provision only to the Slum Rehabilitation Scheme published under section 3B(1) of the Slum Act read with the definition clause defining the term "slum rehabilitation scheme" under section 2(h-b) to mean a Slum Rehabilitation Area declared as such under sub-section (1) of Section 3C by competent authority in pursuance of the Slum Rehabilitation Scheme notified under Section 3B, it goes without saying that the scheme formulated under Regulation 33(10) of the

said D.C.Regulations cannot be said to be a scheme to which the provision of section 3D of the Slum Act would apply, and therefore, there is no question of finding fault with the jurisdiction or power of the Deputy Collector in the order which passed in the matter in hand. The contention regarding the absence of power to such authority sought to be raised by the petitioner in the matter in hand is, therefore, devoid of substance.

6. As regards the area allotted to the petitioner is concerned, it cannot be disputed that the petitioner’s present structure occupies more than 1400 sq. ft. However, clause 5.3 of the D.C.Regulations clearly provides that "built up area for commercial/office/shop/economic activity upto 20.90 sq. m. (225 sq.ft.) carpet area or actual area whichever is less, shall be provided to the eligible person free of cost as part of the rehabilitation Project. Any area in excess of 20.90 sq.mt. to the extent of existing area may, if required, be sold on preferential basis at the rate for commercial area in the free sale component." The statutory provision regarding entitlement of the alternative accommodation and the extent of an area in that regard being in relation to the non residential premises and

particularly the commercial premises are clearly restricted to a maximum area of 225 sq.ft. irrespective of the existing area in occupation of the structure of a claimant. In the case in hand, taking into consideration the fact that the petitioner's premises are used for commercial activities, the authorities have provided alternative accommodation of an area of 225 sq.ft. to the petitioner. It is not the case of the petitioner that he had expressed willingness to purchase additional area at normal market price. Being so, no fault can be found with the said order restricting the area of 225 sq.ft. as the same is clearly in consonance with the statutory provision as regards the entitlement of the petitioner in that regard.

7. As regards the third ground about failure to afford sufficient opportunity of being heard, in as much as that the request for adjournment was refused by the lower appellate authority, at the outset, it is to be noted that in terms of Section 35(4) of the Slum Act, no appeal can be decided unless the appellant is heard or is given a reasonable opportunity of being heard either in person or through a legal practitioner. It is not in dispute that a proper notice of hearing of the appeal was issued to the

petitioner. The petitioner was aware of the date of hearing of the appeal well in advance. It was necessary for the petitioner to make appropriate arrangement to ensure presence of his advocate in case the petitioner desired the matter to be argued by his advocate. Merely because his advocate was absent on the date of hearing, that itself cannot be sufficient to contend that, on account of refusal of adjournment of the matter, the prejudice has been caused to the petitioner. While considering the issue of prejudice, it is necessary to ascertain the point in issue which was required to be considered by the concerned lower appellate authority and whether the lower appellate authority has considered such point on proper application of mind, and if the answer to such question is in the affirmative, then unless it is specifically disclosed as to how the prejudice has been caused to the petitioner, mere submission in that regard cannot be sufficient to presume that the prejudice has been caused to the petitioner. In the case in hand, undoubtedly, the issue is related to the entitlement of alternative accommodation to the petitioner. While dealing with the said issue, the lower appellate authority was required to deal with all the points regarding the entitlement of the petitioner in that regard and on consideration thereof

to pass an appropriate order. As already seen above, the lower appellate authority only after considering the points regarding entitlement of the petitioner in that regard, has passed the impugned order in accordance with the provisions of law. Unless the petitioner is able to point out the findings arrived at by the lower appellate authority to be either perverse or contrary to the materials on record or disclose non application of mind, it cannot be said that any prejudice has been caused to the petitioner on account of refusal on the part of the lower appellate authority to grant adjournment in the matter. Undoubtedly, the lower appellate authority has not considered the issue about the jurisdiction of the officer who passed the order which was sought to be challenged in the case in hand. As already seen above, on that point also there is no substance in the arguments advanced in that regard on behalf of the petitioner. Being so, merely because the said point in issue was not considered, that itself cannot be enure to the benefit of the petitioner to allege that the prejudice has been caused to the petitioner on that count. Even if it was to be considered, the answer could not have been in any manner different from the one answered hereinabove. The law in that regard is well settled by the decision of a Division

Bench of this Court which was sought to be relied upon on behalf of the petitioner himself.

8. For the reasons stated above, therefore, there is no case made out for interference in the impugned order passed by the lower appellate authority in writ jurisdiction. The petition, therefore, fails and is hereby dismissed.

9. At this stage, the learned advocate for the petitioner prays for stay of the order of eviction of the petitioner from the premises in question. The prayer is objected to, on behalf of the respondents. At the same time, the learned advocate for the respondents has stated that the respondents would not execute the order of eviction of the petitioner from the premises in question for a period of two weeks from today.

(R.M.S.KHANDEPARKAR, J)